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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,893	09/28/2001	Jeffrey S. Autor	1662-39200 JMH (P01-3593)	3532
23505	7590	09/07/2005	EXAMINER	
CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267			TODD, GREGORY G	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/965,893

Applicant(s)

AUTOR ET AL.

Examiner

Gregory G. Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is a second office action in response to applicant's amendment filed, 24 June 2005, of application filed, with the above serial number, on 28 September 2001 in which claims 6, 13, 22, and 25 have been amended. Claims 1-35 are therefore pending in the application. Applicant's filing of declaration under 37 CFR 1.131 is ineffective at this time; a copy of the rejection is provided below for Applicant's convenience.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 7-9, 12-15, 17-18, 22-25, 27-28, and 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Ip (hereinafter "Ip", 2003/0046339).

As per Claim 1, Ip teaches a computer server rack, comprising:

a plurality of modular server chassis (10) configured to hold a plurality of computer servers (15), each chassis comprising a chassis controller (30) having a processor and a memory, and an internal communications bus coupling each of the chassis controllers (55) (at least Fig. 1; paragraphs 22-24);

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wherein the chassis controllers transmit and receive a server rack name on the internal communications bus (at least paragraph 22, 24; unique server / rack identification from coupling); and

wherein the name of the rack is stored in the memory in each chassis controller (at least paragraph 24, 30; identification sent to data collection unit).

As per Claim 2. The server rack of claim 1 further comprising at least one modular power supply chassis configured to hold a plurality of power supplies and further comprising a chassis controller having a processor and a memory (at least paragraph 20, 23, 38; rack power supply).

As per Claim 3. The server rack of claim 1 further comprising an external port in at least one of the computer servers (at least paragraph 22);

wherein the rack name is assigned to the rack via manual input through the external port (at least paragraph 24).

As per Claim 7. The server rack of claim 1 wherein; the memory in which the rack name is stored is flash memory (at least paragraph 30).

As per Claim 8, Ip teaches a chassis controller deployable in a server rack comprising:

a processor (at least paragraph 30);

a system memory (at least paragraph 30);

a flash memory (at least paragraph 30);

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an internal bus port through which the controller may communicate with other controllers (at least paragraph 30; 24; coupling);

a device bus port through which the controller may communicate with other devices in the same chassis (at least paragraph 22, 24; rack coupling);

wherein the name of the rack in which the chassis is disposed is stored in flash memory (at least paragraph 24; data collection unit).

As per Claim 9. The chassis controller of claim 8 wherein:

if the controller receives a rack name from the device bus, the new name is written to flash memory (at least paragraph 24).

Claims 12-15, 17-18, 22-25, 27-28, and 32-34 do not add or define any additional limitations over claims 1-3, and 7-9 and therefore are rejected for similar reasons.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6, 10-11, 16, 19-21, 26, 29-31, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ip in view of Smith (hereinafter "Smith", 6,792,515).

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As per Claim 4, Ip fails to teach each chassis controller further comprises a conflict flag; wherein if a controller receives a rack name from the internal communications bus that differs from the rack name stored in memory, the controller issues a naming conflict message and changes the position of the conflict flag. However, the use and advantages for using such a protocol is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Smith (at least col. 6, lines 12-41). Smith teaches avoiding duplicate geographical addressing for server blades. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Smith's unique server addressing with Ip's system as Ip teaches giving a server or rack a unique MAC address or IP address (at least paragraph 24), as an example, thus if not using the example, it would have been desirable for Ip's system to have another unique naming scheme as similarly taught by Smith.

As per Claim 5. The server rack of claim 4 wherein the conflict flag is a bit field in the chassis controller (at least Smith col. 6, lines 12-41).

As per Claim 6. Ip and Smith teach the server rack of claim 4 wherein the naming conflict message provides a warning to a server administrator as Ip teaches monitoring the status (at least paragraph 19, 32) and collecting information to be transmitted to a user or technician. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Smith's unique naming method with Ip's remotely monitoring status to produce the desired invention as Ip teaches all monitoring statistics to be transmitted to a user or technician.

As per Claim 10, Ip fails to teach the controller receiving a rack name from the internal bus, the new name is compared with the rack name in flash memory to check for name conflicts. However, the use and advantages for using such a protocol is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Smith (at least col. 6, lines 12-41). Smith teaches avoiding duplicate geographical addressing for server blades. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Smith's unique server addressing with Ip's system as Ip teaches giving a server or rack a unique MAC address or IP address (at least paragraph 24), as an example; thus if not using the example, it would have been desirable for Ip's system to have another unique naming scheme as similarly taught by Smith.

As per Claim 11. The chassis controller of claim 10 further comprising:

if the controller receives a conflict message from the internal bus, the existing name in flash memory is invalidated (at least Smith col. 6, lines 12-41).

Claims 16, 19-21, 26, 29-31, and 35 do not add or define any additional limitations over claims 4-6 and 10-11 and therefore are rejected for similar reasons.

### ***Response to Arguments***

6. Applicant's arguments filed 24 June 2005 have been fully considered but they are not persuasive.

The affidavit filed on 24 June 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ip reference.

## I. FORMALITIES

"The following parties may make an affidavit or declaration under 37 CFR 1.131:

(A) All the inventors of the subject matter claimed.

(B) An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.

(C) \*\*> If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate.<

(D) The assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor. Ex parte Foster, 1903 C.D. 213, 105 O.G. 261 (Comm'r Pat. 1903)." (See MPEP 715.04)

The declaration is missing the signature of inventor Michael Sanders. On page 10 of the response to arguments, "Applicants remind the office that one of the inventors, Michael Sanders, is deceased". The Examiner notes, that no evidence of Mr. Sanders' death has been made of record in this application. Therefore, the declaration is ineffective on its face.

A telephone call was made to Mr. Harris on 30 August 2005 on this matter, and Applicant was advised that providing evidence of Mr. Sanders death would allow the assignee of the entire right and title (properly established under the rules) to sign on his behalf.

In the interest of compact prosecution, the Examiner will comment on the substantive deficiencies in the declaration.



Note that these comments are illustrative and not necessarily comprehensive.

Applicant bears the burden of providing a proper showing under 131 in order to antedate the Ip reference.

## II. SUBSTANTIVE ISSUES

Applicant is attempting to prove prior invention through a showing of conception prior to September 5, 2001, the effective date of the Ip reference, coupled with diligence from just before that date until the filing of this application on September 28, 2001.

### A. General Considerations

"A general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits

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pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.") (See MPEP 715.07)

#### B. Conception

While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The sole statement with respect to conception is found in paragraphs 3a and 3b of the declaration which refer to supporting exhibits A and B as evidence that conception occurred before September 5, 2001.

This is a general statement which does not even describe in broad terms what facts the exhibit is relied upon to establish. There is no "clear explanation of the exhibits" which points out what facts are established thereby.

Thus, applicant has not met the burden of establishing conception of the invention prior to the effective date of the reference.

Nevertheless, the Examiner has reviewed the aforementioned Exhibits and makes the following observations:

While the data shown in Exhibit A and Exhibit B show the general nature of the invention, (i.e., rack naming for a chassis of servers) they do not show specifics of the

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claimed invention. In reviewing the exhibit, it is not clear to the Examiner where support can be found for many of the claim elements. For example, support for multiple chassis controllers transmitting and receiving the rack names on the internal bus, flash memory separate from servers and inside the chassis itself, power supply chassis and power supplies in addition to having an associated processor and memory, providing a message warning to an administrator, etc.

Furthermore, although Applicant is entitled to redact dates that are prior to the effective date of the reference, Applicant must state that the redacted dates (on the exhibits) actually occurred prior to the critical date.

#### C. Diligence

The critical period in which diligence must be shown begins just prior to, September 5, 2001, the effective date of Ip and ends on September 28, 2001, the filing date of this application.

Applicant supplies 9 pages of what appear to be screen shots and carrying a legend "History – [CPQ\_PAT\_APP\_39200]" and states in paragraph 3c that this is "an electronic file log establishing reasonable diligence by outside patent counsel".

There is absolutely no explanation of what the log is, what the entries represent, what time period they span, and how they would establish diligence by outside counsel. It is not clear what is being shown in the figures, as there is simply a log of something unknown associated with user names and times/dates.

Furthermore, if applicant is relying on diligence of counsel a declaration by counsel as to the relevant facts may be needed.

For at least all the above mentioned reasons the declaration (and supporting evidence) fail to establish prior invention. The rejection is maintained.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Previously cited Bodner et al, Nouri et al, Clubb et al, Sims et al, Hughes et al, Lopez, and Smith are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G. Todd whose telephone number is (571)272-

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4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd



Patent Examiner

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